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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,325	01/03/2002	Harry W. Eberle III	0247-5	5841

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 07/24/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/037,325	Applicant(s) EBERLE, HARRY W.	
	Examiner Ernesto Garcia	Art Unit 3679	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 10 April 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See attachment.

Response to Amendment

The reply filed on April 10, 2007 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): The appeal brief still has not been corrected and introduces new problems. The explanation of the subject matter in the brief is still about the disclosed invention rather than the claimed invention. Applicant needs to map out the independent claims individually so that their subject matter is defined in those claims. The applicant needs to mention what the independent claims call for referring to the specification by page and line number and to the drawings by reference character. Currently, the explanation appears to be taken from the specification and put into section V of the brief. For instance, at page 9, in the last paragraph, it mentions "having a top view shape that is generally rectangular", this is not called for in claim 29 and should be deleted. On page 10, it mentions that the vertical support member includes walls 9 and 11 and preferably recesses. This is not found in claim 29 and should also be deleted. Page 10 mentions "nails, screws, staples, or the like", This is also not found in claim 29. Further, the last paragraph of the description of the claimed invention should be deleted since this paragraph describes the disclosed invention rather than the claimed invention. Note that putting the specification on section V of the brief is not the requirement. Further, a concise explanation of the dependent claims should not be provided unless it contains means plus function recitations. Furthermore, the paragraph bridging pages 14-15 contains content that is not proper for the Summary of Claimed Subject Matter section and should be deleted.

The examples given are just a few examples. The applicant needs to review the entirety of description of section V of the brief since it still does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal.

Further, section (XII) as presented in the brief is not permitted and is not a requirement of the brief. Applicant cannot rely on the drawings of section (XII) as evidence especially when 37 CFR 41.337(c)(2) states,

"A brief shall not include any **new or non-admitted amendment**, or any new or non-admitted affidavit or other evidence".

The argument section also fails to properly provide the ground of rejection heading. Note that the ground of rejection that is bolded is placed in the discussion and is not considered a proper heading.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30AM-6:00PM. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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July 19, 2007



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